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AUTHORITY: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93-259, 88 Stat. 55 (29 U.S.C. 204f).

Subpart A—General Provisions

SOURCE: 62 FR 67244, Dec. 23, 1997, unless otherwise noted.

§ 551.101 General.

(a) The Fair Labor Standards Act of 1938, as amended (referred to as “the Act” or “FLSA”), provides for minimum standards for both wages and overtime entitlement, and delineates

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administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(b) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.

§ 551.102 Authority and administration.

(a) *Office of Personnel Management.* Section 3(e)(2) of the Act authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management (OPM) to administer the provisions of the Act. OPM is the administrator of the provisions of the Act with respect to any person employed by an agency, except as specified in paragraphs (b), (c), and (d) of this section.

(b) *The Equal Employment Opportunity Commission* administers the equal pay provisions contained in section 6(d) of the Act.

(c) *The Department of Labor* administers the Act for the following United States Government entities:

- (1) The Library of Congress;
- (2) The United States Postal Service;
- (3) The Postal Rate Commission; and
- (4) The Tennessee Valley Authority.

(d) *Office of Compliance.* The Congressional Accountability Act of 1995, as amended, sections 1301 *et seq.* of title 2, United States Code, extends rights and protections of the FLSA to employees of the following United States Government entities, and assigns certain administrative responsibilities to the Office of Compliance:

- (1) The United States House of Representatives;
- (2) The United States Senate;;
- (3) The Capitol Guide Service;

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- (4) The Capitol Police;
- (5) The Congressional Budget Office;
- (6) The Office of the Architect of the Capitol;
- (7) The Office of the Attending Physician; and
- (8) The Office of Compliance.

§ 551.103 Coverage.

(a) *Covered.* Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is—

- (1) Defined as an employee in section 2105 of title 5, United States Code;
- (2) A civilian employee appointed under other appropriate authority; or
- (3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) *Not covered.* The following persons are not covered under the Act:

- (1) A person appointed under appropriate authority without compensation;
- (2) A trainee;
- (3) A volunteer; or
- (4) A member of the Uniformed Services.

§ 551.104 Definitions.

In this part—

Act or *FLSA* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*).

Administrative employee means an employee who meets the criteria in § 551.206.

Agency, for purposes of OPM's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act and in this section, but does not include the entities of the United States Government listed in § 551.102(c) for which the Department of Labor administers the Act or § 551.102(d)(1) through (8), whose employees are covered by the Congressional Accountability Act of 1995, as amended, which makes applicable the rights and protections of the FLSA and assigns certain administrative responsibilities to the Office of Compliance.

Claim means a written allegation from a current or former employee concerning his or her FLSA exemption

status determination or entitlement to minimum wage or overtime pay for work performed under the Act. The term “claim” is used generically in subpart G of this part to include complaints under the child labor provisions of the Act.

Claim period means the time during which the cause or basis of the claim occurred.

Claimant means a current or former employee who files an FLSA claim.

Customarily and regularly means a frequency which must be greater than occasional but which may be less than constant. For example, the requirement in § 551.205(a)(2) will be met by an employee who normally and recurrently exercises discretion and independent judgment in the day-to-day performance of duties.

Discretion and independent judgment means work that involves comparing and evaluating possible courses of conduct, interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. However, firm commitments or final decisions are not necessary to support exemption. The “decisions” made as a result of the exercise of independent judgment may consist of *recommendations for action* rather than the actual taking of action. The fact that an employee's decisions are subject to review, and that on occasion the decisions are revised or reversed after review, does not mean that the employee is not exercising discretion and independent judgment of the level required for exemption. Work reflective of discretion and independent judgment must meet the three following criteria:

(1) The work must be sufficiently complex and varied so as to customarily and regularly require discretion and independent judgment in determining the approaches and techniques to be used, and in evaluating results. This precludes exempting an employee who performs work primarily requiring skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern the employee's action.

(2) The employee must have the authority to make such determinations